INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes and order involved	2
Statement	2
Argument	6
Conclusion	15
Appendix	16

CITATIONS

Cases:	
Carvajal, Petition of, 154 F. Supp. 525	10
Cook v. *United States*, 288 U.S. 102	10
Foti v. *Immigration and Naturalization Service*, certiorari granted, 371 U.S. 947	14
Hurn v. *Ousler*, 289 U.S. 238	14
Johnson v. *Browne*, 205 U.S. 309	9–10
Lefson v. *Esperdy*, 211 F. Supp. 769	13
Moser v. *United States*, 341 U.S. 41	10, 11, 12
Rego, Petition of, 289 F. 2d 174	8
Romero v. *International Terminal Operating Co.*, 358 U.S. 354	14
Rosio, United States ex rel. v. *Shaughnessy*, 134 F. Supp. 217	10
Schenkel v. *Landon*, 133 F. Supp 305	8, 10
Skender, In re, 248 F. 2d 92	10
Taussig v. *Wellington Fund, Inc.*, 313 F. 2d 472	14
United States v. *Gredzens*, 125 F. Supp. 867	8
United States v. *Lee Yen Tai*, 185 U.S. 213	9
United States v. *Rumsa*, 212 F. 2d 927, certiorari denied, 348 U.S. 838	8

Treaty and statutes:

Treaty of February 22, 1926, between the United States and El Salvador, 46 Stat. 2817 — Page 6

Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 75 Stat. 650, *et seq.*:

- Section 101(a)(19) (8 U.S.C. 1101(a)(19)) — 18
- Section 106(a) (8 U.S.C. (Supp. III) 1105a(a)) — 13, 14, 18
- Section 212(a) (8 U.S.C. 1182(a)) — 7, 19
- Section 212(c) (8 U.S.C. 1182(c)) — 14, 19
- Section 241(a) (8 U.S.C. 1251(a)) — 7, 19
- Section 315 (8 U.S.C. 1426) — 3, 4, 7, 11, 20

Selctive Service Act of 1948, 62 Stat. 604, Section 6(a) — 7

Universal Military Training and Service Act of 1951, 65 Stat. 75 (50 U.S.C. App. (1946 ed. Supp V) 453):

- Sec. 3 — 16
- Sec. 4(a) — 8, 16
- Sec. 6(a) — 7, 8, 17

Miscellaneous:

Executive Order No. 10292 of September 25, 1954, 16 Fed. Reg. 9843 — 6, 7, 20

Executive Order 10659 (3 C.F.R. (1956 Supp.) 59) — 6

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 951

JORGE AMERICO UNGO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 311 F. 2d 905.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 1963. The petition for a writ of certiorari was filed on March 25, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the President had the authority to exempt an alien admitted for permanent residence from selective service pursuant to a treaty with the alien's homeland providing for such an exemption.

2. Whether petitioner applied for and received exemption from selective service as an alien, with knowledge that he would thereby become permanently ineligible for citizenship under Section 315 of the Immigration and Nationality Act.

3. Whether a court of appeals, which has original jurisdiction as to the administrative finding of deportability, has pendant jurisdiction to review initially the denial of discretionary relief.

STATUTES AND ORDER INVOLVED

The pertinent statutes and order appear in the Appendix, *infra*, pp. 16–21.

STATEMENT

Petitioner, a native and citizen of El Salvador, was first admitted to the United States on September 9, 1948, as a permanent resident (2 R. Nov. 21, 1960, pp. 2–3).[1] On September 27, 1949, he registered under the Selective Service Act (2 R. Nov. 21, 1960, p. 3), and, prior to July 1950, was notified that he was to be called for service in the armed forces (2 R. Nov. 21, 1960, p. 6; March 24, 1961, p. 32). He returned to El Salvador in July and obtained a change of his visa to that of a nonimmigrant student so that he could finish his education "without a problem." He reentered the United States as a student on September 6, 1950 (2 R. Nov. 21, 1960, pp. 3, 6–7; Feb. 23, 1961, pp. 30–31; March 24, 1961, p. 1).

In 1952, petitioner was notified that he was to be inducted, whereupon he returned to El Salvador after

[1] The record references include designations by dates since the record for each date is separately paginated. The exhibits appear at the end of Volume 2 of the Record.

his graduation. On September 5, 1952, he re-entered the United States on a visa for permanent residence (2 R. Nov. 21, 1960, pp. 3, 6; Feb. 23, 1961, pp. 31–32). On October 10, 1952, he was notified that he was acceptable for induction (Ex. 6). On October 15, 1952, at petitioner's request, the El Salvador consulate commenced proceedings for deferment of petitioner as a citizen of El Salvador (Exs. 4, 6, 8; 2 R. Feb. 23, 1961, pp. 31–33). On October 22, 1952, petitioner was ordered to report for induction (Ex. 6). On October 28, 1952, his induction was postponed pending processing of the application for deferment (Ex. 6).

On November 26, 1952, the Director of Selective Service advised that the application for deferment had been approved. He stated, however, that if there was not already on file a request for relief as an alien which was signed by petitioner, he should be required to submit such request prior to classification in Class IV–C (Ex. 6, p. 2). On February 1, 1953, petitioner wrote to the selective service board as follows (Ex. 4):

> I received the letter in which you notified me that the application that I made for my deferment, transmitted by the Embassy of El Salvador, was approved by the Department of State, therefore I desire to be classified in class IV–C as a treaty alien.

He was so classified (Ex. 6, p. 2). On May 20, 1953, upon review of petitioner's file, petitioner's selective service board sent him a Form C–294, setting forth Section 315 of the Immigration and Nationality Act which provides that an alien relieved of service on the ground of alienage "shall be permanently ineligible"

for United States citizenship (Ex. 6). On June 15, 1953, the selective service board received a Form C–294 which petitioner had signed. The form states that "I request exemption from such military service with full knowledge of the provisions of Section 315 of the Immigration and Nationality Act that any alien who applies or has applied for exemption from training or service in the Armed Forces of the United States on the ground that he is an alien, and is or was relieved from training or service on such ground, shall be permanently ineligible to become a citizen of the United States * * *" (Ex. 5). Petitioner has subsequently remained in Class IV–C as a treaty alien (Exs. 3, 5–6; 2 R. Nov. 21, 1960, pp. 5–6).

In 1954 petitioner returned to El Salvador (2 R. Feb. 23, 1961, p. 21). On February 26, 1958, he applied for an immigrant visa, giving his residence as El Salvador and alleging that he had never applied, formally or informally, for a visa, either as an immigrant or nonimmigrant, and that he was not of an excludable class, including "persons ineligible to citizenship" (Ex. 2, Items 4, 26, 33, 37–38). On March 2, 1958, he was admitted for permanent residence on a nonquota immigrant visa (2 R. Nov. 21, 1960, p. 3).

Petitioner's last entry into the United States was on December 19, 1959, after an absence of 5 months (2 R. Nov. 21, 1960, p. 3; March 24, 1961, p. 1). An order to show cause was issued on November 14, 1960, charging that he was subject to deportation in that at the time of his last entry he was excludable as an alien ineligible to citizenship (Ex. 1). On March

24, 1961, the Special Inquiry Officer sustained the charge and ordered deportation. He found that petitioner, in testifying that he did not know what he was signing when he executed Form C–294, "was not being entirely truthful" in light of petitioner's being "an intelligent individual, a college graduate, and [in] excellent command of the English language" and having disclosed by his changes of visa and other actions that he was "fully aware of the various provisions of the Selective Service laws which might affect his liability for induction" (2 R. March 24, 1961, p. 2). The Special Inquiry Officer granted a request for voluntary departure. He denied a request, however, for exercise of discretion under Section 212(c) of the Immigration and Nationality Act which gives the Attorney General authority to allow the entry of an otherwise excludable alien when the alien is returning to an unrelinquished domicile of seven consecutive years (2 R. March 24, 1961, p. 4).[2] The Board of Immigration Appeals dismissed petitioner's appeal (2 R. July 11, 1961).

Petitioner filed a petition for review in the United States District Court for the Northern District of

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[2] With respect to petitioner's return to El Salvador in 1954 (supra p. 4), he later presented testimony before the Special Inquiry Officer that the departure was for the purpose of obtaining some "field experience" (Exs. 10–12; 2 R. Nov. 21, 1960, pp. 8–9; Feb. 23, 1961, pp. 21–22, 24, 36–38, 41, 43, 47). However, at the end of petitioner's first employment in El Salvador, he took a second employment and then a third (2 R. Nov. 21, 1960, p. 9). In 1957 he was admitted to the United States on a nonimmigrant visa for a vacation and as a delegate to a conference (2 R. Feb. 23, 1961, pp. 22, 24; March 24, 1961, p. 1).

California (1 R. August 18, 1961). Pursuant to stipulation of the parties, the petition was transferred on April 10, 1962, to the Court of Appeals for the Ninth Circuit under Section 106(a) of the Immigration and Nationality Act, as amended, 75 Stat. 650, 651 (1 R. April 10, 1962). The court of appeals affirmed the order of deportation.

ARGUMENT

The Treaty of February 22, 1926, between the United States and El Salvador provides that either party may draft, in time of war with a third country, "nationals of the other having a permanent residence within its territories and who have formally * * * declared an intention to adopt its nationality. 46 Stat. 2817, 2821.[3] This provision implies, and has been understood by both countries to mean, that all other nationals are exempt from service in the other's armed forces. In Executive Order No. 10292 of September 25, 1951, 16 Fed. Reg. 9843, *infra*, p. 20, the President provided for the deferment under the Universal Military Training and Service Act of 1951 of any alien "exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national."[4] Pursuant to these provisions, petitioner, a citizen of El Salvador who was then permanently residing in the United States, applied for and re-

[3] The treaty is no longer in effect, having been abrogated in 1958, after petitioner had been deferred from the draft.

[4] Executive Order 10292 remained in effect until February 15, 1956, at which time it was rescinded by Executive Order 10659, 3 C.F.R. (1956 Supp.) 59, 62.

ceived a deferment. Consequently, petitioner is ineligible for citizenship under Section 315 of the Immigration and Nationality Act of 1952, *infra*, p. 20, which provides that "any alien who applies * * * for exemption * * * from training or service in the Armed Forces * * * on the ground that he is an alien, and is or was relieved * * * from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States." As an alien ineligible for citizenship, petitioner was excludable under Section 212(a)(22) of the Act, *infra*, p. 19, when he subsequently left the United States and returned, and, having entered the United States at a time when he was excludable, he is deportable under Section 241(a), *infra*, p. 19.

1. Petitioner contends that the President was without power to issue Executive Order 10292, under which petitioner was relieved from military service, and that therefore he is not ineligible for citizenship under Section 315(a) even though he in fact applied for, and was given, a deferment.

a. Petitioner's argument that the President had no power to grant exemption to treaty aliens is based on Section 6(a) of the Universal Military Training and Service Act of 1951. Section 6(a) of the Selective Service Act of 1948, 62 Stat. 604, originally provided that certain classes of persons, including foreign representatives and consular officials residing in the United States who have not declared their intention to become citizens of the United States, "shall not be required to be registered under section 3 and should be relieved from liability for training and service

under section 4(b)." The Universal Military Training and Service Act of 1951, *infra*, p. 16, modified Section 6(a) so as to exempt all such foreign representatives and consular agents "who are not citizens of the United States * * * except that aliens admitted for permanent residence in the United States shall not be so exempted." It is evident that this section was intended to deal only with the exemption for foreign personnel having some degree of diplomatic connection. It therefore did not bar exemption, on the entirely different basis of a treaty with a foreign country, relating generally to citizens of that country residing in the United States. *Schenkel* v. *Landon*, 133 F. Supp. 305, 309 (D. Mass.).

Petitioner also relies on dicta that the power specifically given in Section 4(a) of the Universal Military Training and Service Act, *infra*, p. 16, to the President to exempt aliens other than those admitted for permanent residence must, by implication, exclude the power to exempt aliens admitted for permanent residence, including aliens required to be exempted under existing treaties.[5] However, this provision confers ad-

[5] The actual holdings in *United States* v. *Rumsa*, 212 F. 2d 927 (C.A. 7), certiorari denied, 348 U.S. 838, and *United States* v. *Gredzens*, 125 F. Supp. 867 (D. Minn.), are discussed and distinguished in *Schenkel* v. *Landon*, *supra*, 133 F. Supp. at 309-310. In *Rumsa* the application for exemption was not on the basis of a treaty but merely because Rumsa was an alien (212 F. 2d at 931); the President had not authorized relief from service to all aliens. In *Gredzens*, the registrant had failed to exhaust his administrative remedies. 125 F. Supp. at 872. His later refusal to serve was thus an offense, whether or not he would have been entitled to exemption had he made proper application. In *Petition of Rego*, 289 F. 2d 174, 175 (C.A. 3), the registrant was held not to have obtained relief from service but only a postponement.

ditional power on the President to exempt aliens who would not be exempt under other law. It does not reflect on an exemption of aliens under existing law, such as the treaty between the United States and El Salvador.

In any event, if Sections 6(a) and 4(a) of the Act do, in some way, suggest limitations on the power of the President to confer exemptions on resident aliens pursuant to a valid treaty, we submit that such a result should not be reached in the absence of the clearest expression of Congress' intent. As the district court observed in *Schenkel* v. *Landon, supra,* 133 F. Supp. at 308, in discussing Section 4(a):

> [T]he consequence is not only that treaties of the United States are abrogated but that Presidential discretion in one of the most sensitive fields of foreign relations is sharply curtailed. Were such a result intended, one would expect first that it would have been adverted to in Congress; second, that the State Department would have been heard; and third, that immediately after the passage of the Act the President's Executive Order and the Selective Service regulations would have been modified and foreign embassies notified. None of these events appears to have occurred.

The court further noted "the silence of Congress in the face of a well known history of four years of continued exemptions of resident treaty aliens." *Id.* at 309. And, as the court of appeals below stated (Pet. App. A, p. v): "Repeals [of treaties] by implication are not favored by the law. See *United States* v. *Lee Yen Tai,* 185 U.S. 213 (1902); *Johnson* v. *Browne,*

205 U.S. 309 (1907); *Cook* v. *United States*, 288 U.S. 102 (1933)."

b. Even assuming *arguendo* that the grant of an exemption to petitioner was without authority, he nevertheless is ineligible for citizenship. Petitioner (1) applied for exemption "on the ground that he is an alien" and (2) was in fact "relieved or discharged from such training or service on such ground." He thereby satisfied both requirements of Section 315 so as to bar future citizenship. *In Re Skender*, 248 F. 2d 92, 95 (C.A. 2); *Schenkel* v. *Landon*, *supra*, 133 F. Supp. at 310–311; *United States ex rel. Rosio* v. *Shaughnessy*, 134 F. Supp. 217, 218 (S.D. N.Y.); *Petition of Carvajal*, 154 F. Supp. 525, 529 (N.D. Cal.). As observed in the *Skender* case (248 F. 2d at 95–96):

> There is nothing in the language of that section to suggest that only those legally entitled to be relieved shall be debarred: it is the fact of relief, not the legal right to it, that is determinative * * *.
>
> After all, if debarment from citizenship is deemed a just fate for an alien who sought and was accorded an exemption to which he was entitled, it is not unduly harsh for one who (a) sought an exemption to which he was entitled and (b) was accorded an exemption to which he was *not* entitled. Section 315(a) did not leave it open to the appellant to attack the validity of the very classification which he sought on the ground that when made it gave him an exemption to which he was not entitled.

2. Petitioner claims (Pet. 8–10) that his case is governed by *Moser* v. *United States*, 341 U.S. 41, which held that the waiver of the right to obtain

United States citizenship, by reason of an application for exemption for military service, must have been intelligently made. On the particular facts in *Moser*, the Court found that the waiver had not been intelligent. The Court based this conclusion on the ground that the application form for exemption from service which the alien signed in *Moser* was ambiguous since the State Department had deleted, after protests by the Swiss government, the express statement "I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States." *Id.* at 44. Furthermore, before the alien made application, he asserted to the local draft board an unconditional right to exemption without being barred from citizenship and was told by the Swiss Embassy that filing the application form would not have this effect. On this record, the Court accepted the district court's finding that petitioner had not signed the application for exemption knowing that he would be precluded from citizenship. *Id.* at 45.

The facts in this case are entirely different. The initial reviewing court here, the court of appeals, found that petitioner "knowingly and intentionally waived his right to become an American citizen" (Pet. App. A, p. vi). This determination is amply supported by the evidence. Petitioner concedes that he signed a form expressly stating that he requested "exemption from such military service with full knowledge of the provisions of Section 315 * * * that any alien who applies * * * for exemption from training or service in the Armed Forces * * * on the ground

that he is an alien, and is * * * relieved from training or service on such ground shall be permanently ineligible to become a citizen * * *" (see *supra*, p. 4). This statement, which was substantially the same as the sentence omitted in the form involved in *Moser*, was restored to the form in order to meet the requirements of this Court's decision.

Petitioner attempted to show before the Special Inquiry Officer his lack of understanding of what he signed. The hearing officer was justified in not crediting this testimony since petitioner is a graduate engineer of a United States school with excellent command of the English language, and had demonstrated, by his opportune change of visas back and forth from permanent to nonpermanent status, that he was fully aware of the selective service laws which might affect his liability for induction. There was totally absent here the evidence of misunderstanding which was affirmatively established by the alien in *Moser*.

Petitioner argues that he should not be held to the waiver of eligibility because, when he was first notified of his deferment, he had not signed the form containing the warning language. However, petitioner was expressly told that, while his deferment had been approved, the form had to be signed "prior to classification in Class IV-C" (Ex. 6, p. 2). His classification could, and almost certainly would, have been changed had he refused to sign the form. Petitioner therefore chose to sign the form. This was an affirmative, intelligent decision to give up prospects of future citizenship in order to avoid the dangers of service in 1953.

Petitioner suggests that his waiver was not intelligent because he did not know and was not warned that ineligibility to citizenship would also bar his future right to entry as an alien. It was enough, however, that petitioner was warned that he was giving up his right to United States citizenship. The consequences that might flow from such a decision are many and varied. An alien making such an election could not reasonably expect the government of the United States to inform him as to how it was going to treat him in every detail if he waived ever obtaining citizenship.

3. Petitioner's proceeding for review in the district court was transferred to the court of appeals upon the basis of a stipulation, in which he joined, recognizing the jurisdiction of the court of appeals under Section 106(a). Nevertheless, petitioner now contends (Pet. 11–12) that this Court should review the issue of whether the court of appeals had jurisdiction to review that part of the proceeding which related to denial of discretionary relief.

Petitioner's proceeding for review in the court below, as also in this Court, basically challenged the ruling that he was deportable. With respect to that issue, there is no question or conflict on the issue of jurisdiction; Congress has expressly provided in Section 106(a) of the Act, *infra*, p. 18, that original jurisdiction is in the court of appeals. Such jurisdiction carries with it, under the doctrine of pendant jurisdiction, the jurisdiction with respect to a concurrent challenge of the denial of discretionary relief from the deportation. *Lefson* v. *Esperdy*, 211 F.

Supp. 769, 771 (S.D. N.Y.); see *Hurn* v. *Oursler*, 289 U.S. 238; *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 380; *Taussig* v. *Wellington Fund, Inc.*, 313 F. 2d 472, 475 (C.A. 3). Accordingly, the instant case does not present to this Court the issue which is involved in *Foti* v. *Immigration and Naturalization Service*, No. 544, this Term, certiorari granted, 371 U.S. 947, as to whether, when only the denial of discretionary relief is involved, jurisdiction under Section 106(a) lies originally in the court of appeals or the district court. Therefore, we submit, disposition of the petition for a writ of certiorari need not await the decision of this Court in *Foti*.[6]

[6] Moreover, on the merits of the issue of discretionary relief, there appears no reasonable basis for petitioner's contention that he was returning to a "lawful unrelinquished domicile of seven consecutive years" and thus was entitled under Section 212(c), *infra*, p. 19, to have the Attorney General exercise discretion as to whether he should be readmitted. There was a four-year gap from 1954 to 1958, during which petitioner remained in El Salvador for three successive employments and treated a visit to the United States as a vacation and trip to a conference. And when he signed documents to come to the United States in 1958, he designated El Salvador as his residence. Petitioner later gave self-serving testimony that his absence had the purpose of gaining field experience as an engineer and that he did not know what he was stating in his documents. The Special Inquiry Officer could reasonably resolve the conflict in evidence against petitioner and find that discretionary relief was not available.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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APRIL 1963.

APPENDIX

The Universal Military Training and Service Act of 1951, 65 Stat. 75 (50 U.S.C. App. (1946 ed., Supp. V) 453), provides in pertinent part:

> SEC. 3. Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person now or hereafter in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.
>
> SEC. 4(a). Except as otherwise provided in this title, every male citizen of the United States and every male alien admitted for permanent residence, who is between the ages of 18 years and 6 months and 26 years, at the time fixed for his registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6(h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided,* That each registrant shall be immediately liable for classification and examination, and shall as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: *Provided further,* That

any male alien who is between the ages of 18 years and 6 months and 26 years, at the time fixed for registration, or who attains the age of 18 years and 6 months, after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6(h) of this title, who has remained in the United States in a status other than that of a permanent resident for a period exceeding one year (other than an alien exempted from registration under this title and regulations prescribed thereunder) shall be liable for training and service in the Armed Forces of the United States, except that any such alien shall be relieved from liability for training and service under this title if, prior to his induction into the Armed Forces he had made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States.

* * * * *

SEC. 6(a). Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey and the Public Health Service; cadets, United States Military Academy; midshipmen, United States Navy; cadets, United States Coast Guard Academy; midshipmen, Merchant Marine Reserve, United States Naval Reserves; students enrolled in an officer procurement program at military colleges the curriculum of which is approved by the Secretary of Defense; members of the reserve components of the Armed Forces, the Coast Guard, and the Public Health Service, while on active duty; and foreign diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls and other consular agents of

> foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President who are not citizens of the United States, shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4, except that aliens admitted for permanent residence in the United States shall not be so exempted.

The Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 75 Stat. 651, provides in pertinent part:

> SECTION 101(a)(19) [8 U.S.C. 1101(a)(19)]:
> The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under Section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under Section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605, 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.
>
> * * * * *
>
> SECTION 106(a) [8 U.S.C. (Supp. III) 1105a(a)]:
> The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.) [5 U.S.C. 1031–1042] [1] shall ap-

[1] The Act of December 29, 1950, provides that the courts of appeals "shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders" in the specified proceedings before federal agencies.

ply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this act or comparable provisions of any prior act * * *.

* * * * *

SECTION 212(a) [8 U.S.C. 1182(a)]:

Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * *

(22) Aliens who are ineligible to citizenship, except aliens seeking to enter as nonimmigrants * * *.

* * * * *

SECTION 212(c) [8 U.S.C. 1182(c)]:

Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraph (1) through (25) and paragraphs (30) and (31) of subsection (a). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b).

* * * * *

SECTION 241(a) [8 U.S.C. 1251(a)]:

Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

* * * * *

SECTION 315 [8 U.S.C. 1426]:

(a) Notwithstanding the provisions of section 405(b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien.

Executive Order No. 10292 of September 25, 1951, 16 Fed. Reg. 9843, provides in pertinent part:

* * * * * *

§ 1622.42 *Class IV–C: Aliens.* (a) In Class IV–C shall be placed any registrant who is an alien and who has not been admitted to the United States for permanent residence and who has not remained in the United States for a period exceeding one year. When such a registrant has been within the United States for two or more periods of less than one year and the total of such periods exceeds one year, he shall be deemed to have remained in the United States for a period exceeding one year. In computing the length of such periods, any portion of one day shall be counted as one full day. When any such registrant has remained in the United States for a period exceeding one year he becomes liable for training and service in the Armed Forces of the United States and shall be classified as available for military service unless he is found to be eligible for another classification for a reason other than his alien status.

(b) In Class IV–C shall be placed any registrant who is an alien and who has not been ad-

mitted to the United States for permanent residence but who has remained in the United States for a period exceeding one year and who has, prior to his induction, made application to be relieved from liability for training and service in the Armed Forces of the United States by filing with the local board an Application by Alien for Relief from Training and Service in the Armed Forces (SSS Form No. 130), executed in duplicate. The local board shall forward the original of such form to the Director of Selective Service through the State Director of Selective Service and shall retain the duplicate in the registrant's Cover Sheet (SSS Form No. 101).

(c) In Class IV–C shall be placed any registrant who is an alien and who is certified by the Department of State to be, or otherwise establishes that he is, exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national.

(d) In Class IV–C shall be placed any registrant who is an alien and who has departed from the United States. Such alien shall be placed in Class IV–C even though he is a delinquent but this classification shall in no way relieve him from liability for prosecution for violation of the selective service law. If any registrant so classified under this paragraph returns to the United States, his classification shall be reopened and he shall be classified anew.

U.S. GOVERNMENT PRINTING OFFICE 1963